United Nations CAT/C/CHN/CO/5

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the fifth periodic report of China*

1. The Committee against Torture considered the fifth periodic report of China (CAT/C/CHN/5) at its 1368th and 1371st meetings (CAT/C/SR.1368 and 1371), held on 17 and 18 November 2015, and adopted the present concluding observations at its 1391st and 1392nd meetings, held on 2 and 3 December 2015.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of China and the written replies to the list of issues (CAT/C/CHN/Q/5/Add.1), provided in Chinese and English.

3. The Committee appreciates the quality of its dialogue with the high-level and multisectoral delegation and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

(a) The 2012 amendments to the Criminal Procedure Law, incorporating the prohibition of the use of confessions obtained under torture as evidence in proceedings and the required audio or video recording of interrogations in major criminal cases;

(b) The adoption in 2012 of the Exit-Entry Administration Law, which contains provisions regarding the treatment of refugees;

(c) The 2013 amendment to the Law on State Compensation, permitting the possibility of granting awards for psychological harm.

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

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5. The Committee also welcomes the initiatives of the State party to adopt policies and administrative measures to give effect to the Convention, including:

(a) The Supreme People's Court Interpretation on the Application of the Criminal Procedure Law of 2012, which recognizes the infliction of mental suffering as torture;

(b) The adoption of the National Plan of Action on Combating Human Trafficking (2013-2020);

(c) The abolition in 2014 of the "re-education through labour" system of administrative detention;

(d) The full implementation in 2014 of audio and video recordings for the entire process of interrogation of criminal suspects in major cases.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

6. While noting with appreciation the State party's compliance with the follow-up procedure and the written information provided by the State party on 9 December 2009 (CAT/C/CHN/CO/4/Add.2), the Committee regrets that the recommendations identified for follow-up in the previous concluding observations have not yet been implemented. Those recommendations concerned: legal safeguards to prevent torture; the State Secrets Law and reported harassment of lawyers, human rights defenders and petitioners; the lack of statistical information; and accountability for the events in the autonomous region of Tibet and neighbouring Tibetan prefectures and counties (CAT/C/CHN/CO/4, paras. 11, 15, 17 and 23, respectively).

Definition of torture

7. The Committee notes that various provisions of the Criminal Procedure Law and the Criminal Law, as amended in 2014, prohibit and punish specific acts that could be considered as torture. However, it remains concerned that those provisions do not include all the elements of the definition of torture set out in article 1 of the Convention. In particular:

(a) While noting the provisions established to prohibit the extraction of confessions under torture or the use of violence to obtain a witness statement (article 247 of the Criminal Law), the Committee is concerned that the prohibition may not cover all public officials and persons acting in an official capacity. Moreover, the provisions do not address the use of torture for purposes other than extracting confessions from defendants or criminal suspects;

(b) The crime of beating or ill-treating detainees, contained in article 248 of the Criminal Law, restricts the scope of the crime to the actions of officers of an institution of confinement or of other detainees at the instigation of those officers. It is also restricted to the infliction of physical abuse only.

8. The Committee appreciates that the Supreme People's Court recognizes as torture the use of other methods that cause the defendant to suffer severe mental pain or suffering (see para. 5 (a) above). However, it remains concerned that the Court's interpretation applies to questions regarding exclusion of evidence rather than criminal liability (arts. 2 and 4).

9. **The Committee reiterates its previous recommendations (see CAT/C/CHN/CO/4, paras. 32 and 33, and A/55/44, para. 123) and calls upon the State**

party once again to consider including a comprehensive definition of torture in its legislation that is in full conformity with the Convention and covers all the elements contained in article 1, including the purpose of discrimination. The State party should ensure that all public officials and any other person acting in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture. The Committee draws the State party's attention to paragraph 9 of its general comment No. 2 (2007) on the implementation of article 2 by State parties, in which it is noted that serious discrepancies between the definition in the Convention and that incorporated into domestic law create actual or potential loopholes for impunity.

Prolonged pretrial detention

10. The Committee remains concerned that the State party has not taken any steps to shorten the 30-day maximum legal period during which detainees can be held in police custody and the additional seven days before the procuratorate, who is responsible for supervising detention, approves their arrest. While taking note of the State party's information that procuratorial authorities disapproved the arrest of 406 persons in 2014, the Committee remains concerned that the excessive period of time during which public security officials may detain persons without independent supervision may increase the risk of detainees being ill-treated or even tortured. The Committee expresses concern over reports that public security officials routinely use the exceptional power of extending the detention period to up to 30 days, and even beyond the legally permitted lengths of time. The Committee notes with concern that the detention of a person in a criminal investigation or prosecution is not brought under judicial control until the case is ready for trial (art. 2).

11. **The Committee calls on the State party to:**

(a) **Reduce the 37-day maximum period of police custody and ensure, in law and in practice, that detained persons are promptly brought before a judge within a time limit in accordance with international standards, which should not exceed 48 hours;**

(b) **Ensure that all detainees are either formally charged and remanded by a court pending trial or released;**

(c) **Guarantee the right of detainees, any time during the detention, to challenge the legality or necessity of their detention before a judge who can order their immediate release;**

(d) **Encourage the application of non-custodial measures as an alternative to pretrial detention.**

Restrictions to the rights to access a lawyer and to give notification of custody

12. While appreciating the 2012 amendment to the Criminal Procedure Law, which, inter alia, stipulates that a defence lawyer may meet with a suspect within 48 hours at the latest from the moment of the request, the Committee regrets that the Law does not guarantee the right of the detained person to meet with a lawyer from the very outset of the detention. The Committee is also concerned that in cases of "endangering State security", "terrorism" or serious "bribery", the lawyer must obtain permission from public security investigators to meet with the suspect, and investigators may legally withhold permission for an indefinite period of time if they believe that the meeting could hinder the investigation or could result in the disclosure of State secrets. Public security investigators may also refuse the notification of the detention to family members in the same type of cases if it is considered that the notification may impede their investigation. Notwithstanding that detainees may challenge the decision of whether or not their cases concern State secrets before the national or provincial authorities for confidential affairs,

the Committee considers that this remedy does not offer detainees an option to be heard before an independent and impartial authority and against all grounds of refusal. The Committee notes with concern consistent reports indicating that public security officials constantly refuse lawyers' access to suspects and notification to their relatives on the grounds that the case concerns State secrets, even when the detained person is not charged with State security crimes (art. 2).

13. **The Committee urges the State party to adopt effective measures to ensure, in law and in practice, that detainees are afforded all legal safeguards from the very outset of the detention, including the safeguards mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2. In particular, the State party should:**

(a) **Amend its legislation and grant all detainees the right to have access to a lawyer from the very outset of deprivation of liberty, including during the initial interrogation by the police, irrespective of the charge brought against them;**

(b) **Ensure in practice that detainees are able to communicate with a lawyer in full confidentiality;**

(c) **Guarantee that the relatives or other persons of the detainee's choice are notified of the facts, the reasons and the place of detention within the 24 hours specified in the law;**

(d) **Repeal the provisions in the Criminal Procedure Law that allow restrictions to the right to counsel and to notifying relatives in cases of "endangering State security", "terrorism", serious "bribery" or cases involving "State secrets";**

(e) **Ensure that detainees, their legal representatives and relatives can challenge any unlawful restriction to have access to their clients or to notify the relatives before a judge;**

(f) **Regularly monitor compliance with the legal safeguards by all public officials and ensure that those who do not comply with those safeguards are duly disciplined.**

Residential surveillance at a designated location

14. The Committee expresses grave concern over the amended articles of the Criminal Procedure Law permitting a person under residential surveillance to be placed "at a designated location" for up to six months, in cases involving crimes of "endangering State security", "terrorism" or serious "bribery", and when confinement in their home may impede the investigation. The Committee notes with concern that, although families must be notified within 24 hours of the decision, the Law does not indicate that they must be told the reason or the place of detention, which could be any unregulated and unmonitored facility. The Committee is of the view that these provisions, together with the possibility of refusing access to a lawyer for these types of crimes, may amount to incommunicado detention in secret places, putting detainees at a high risk of torture or ill-treatment (art. 2).

15. **The State party should repeal, as a matter of urgency, the provisions of the Criminal Procedure Law that allow suspects to be held de facto incommunicado, at a designated location, while under residential surveillance. In the meantime, the State party must ensure that procuratorates promptly review all the decisions on residential surveillance taken by public security officers, and ensure that detainees who are designated for potential prosecution are charged and tried as soon as possible and those who are not to be charged or tried are immediately released. If detention is justified, detainees should be formally accounted for and held in officially recognized places of detention. Officials responsible for abuses of detainees should be held criminally accountable.**

Independent medical examination

16. While welcoming the information that all the detention centres of the State party have implemented a system of medical examinations upon entry, the Committee remains concerned that public security officials in detention centres can verify the health examination form recorded by doctors, and that doctors must report to the supervisory department of the public security organ whenever they identify signs of torture. The Committee is concerned that these arrangements may create a conflict of duties for medical practitioners and expose them to pressure to supress evidence (art. 2).

17. **The State party should:**

(a) **Ensure that detained persons undergo a medical examination at the detention centre by medical professionals who operate independently of the police and custodial authorities;**

(b) **Ensure that all examinations are conducted out of the hearing and sight of public security organs;**

(c) **Make the records of such examinations accessible to detainees and their legal representatives;**

(d) **Ensure that doctors report signs and allegations of torture or ill-treatment confidentially and without fear of reprisals to an independent investigating authority.**

Reported crackdown on defence lawyers and activists

18. The Committee is deeply concerned about the unprecedented detention and interrogation of, reportedly, more than 200 lawyers and activists since 9 July 2015. Of those, 25 remain reportedly under residential surveillance at a designated location and 4 are allegedly unaccounted for. This reported crackdown on human rights lawyers follows a series of other reported escalating abuses on lawyers for carrying out their professional responsibilities, particularly on cases involving government accountability and issues such as torture and the defence of human rights activists and religious practitioners. Such abuses include detention on suspicion of broadly defined charges, such as "picking quarrels and provoking trouble", and ill-treatment and torture while in detention. Other interferences with the legal profession have been, reportedly, the refusal of annual re-registration, the revocation of lawyers' licences and evictions from courtrooms on questionable grounds, as in the cases of Wang Quanzhang, Wu Liangshu or Zhang Keke. The Committee expresses concern at the all-inclusive category of "other conduct that disrupts court order" in various articles of the Law on Lawyers, the Criminal Procedure Law and in the newly amended article 309 of the Criminal Law, which in its view is overbroad, undermines the principle of legal certainty and is open to abusive interpretation and application. The Committee is concerned that the above-mentioned abuses and restrictions may deter lawyers from raising reports of torture in their clients' defence for fear of reprisals, weakening the safeguards of the rule of law that are necessary for the effective protection against torture (art. 2).

19. **The State party should stop sanctioning lawyers for actions taken in accordance with recognized professional duties, such as legitimately advising or representing any client or client's cause or challenging procedural violations in court, which should be made possible without fear of prosecution under national security laws, or being accused of disrupting the court order (see Basic Principles on the Role of Lawyers, para. 16). The State party should also:**

(a) **Ensure the prompt, thorough and impartial investigation of all the human rights violations perpetrated against lawyers, that those responsible are tried**

and punished in accordance with the gravity of their acts and that the victims obtain redress;

(b) **Adopt without delay the necessary measures to ensure the development of a fully independent and self-regulating legal profession, so that lawyers are able to perform all of their professional functions without intimidation, harassment or improper interference;**

(c) **Undertake a review of all the legislation affecting the exercise of the legal profession in accordance with international standards, with a view to amending those provisions that undermine lawyers' independence.**

Allegations of torture and ill-treatment by public security officers

20. Notwithstanding the numerous legal and administrative provisions prohibiting the use of torture, the Committee remains seriously concerned over consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system, which overly relies on confessions as the basis for convictions. It also expresses concern over information that the majority of allegations of torture and ill-treatment take place during pretrial and extralegal detention and involve public security officers, who wield excessive power during the criminal investigation without effective control by procuratorates and the judiciary. This overarching power is reportedly further intensified by the public security's joint responsibilities over the investigation and the administration of detention centres which, in the Committee's view, creates an incentive for the investigators to use detention as a means to compel detainees to confess (arts. 2, 12, 13 and 16).

21. **The Committee urges the State party to:**

(a) **Take the necessary legislative and other measures to ensure the complete separation between the functions of pretrial investigation and detention and transfer the power to manage detention centres from the Ministry of Public Security to the Ministry of Justice;**

(b) **Establish an independent, effective and confidential mechanism to facilitate the submission of complaints by victims of torture and ill-treatment to the competent and independent authorities and to ensure in practice that complainants are protected against any reprisal as a consequence of their complaint or any evidence given;**

(c) **Establish effective judicial oversight over the public security officers' actions during investigation or detention;**

(d) **Improve criminal investigation methods to end practices whereby confessions are relied on as the primary and central element of proof in criminal prosecution.**

Independence of the investigations of torture allegations

22. The Committee continues to be concerned that the dual functions of procuratorates, namely, prosecution and pre-indictment review of the police investigation, creates a conflict of interest that could taint the impartiality of its actions, even if carried out by different departments. It takes note, furthermore, of the State party's position that the Chinese Communist Party Politics and Law Committees coordinate the work of judicial bodies without directly taking part in investigations or suggesting lines of action to judges. The Committee is concerned, however, at the necessity of keeping a political body to coordinate the proceedings, with a potential to interfere in judicial affairs, particularly in cases of political relevance. In view of the above, the Committee regrets that the State party has not

provided disaggregated and complete information on the number of torture-related complaints, received from all sources, for each of the crimes that cover the various aspects of the definition of torture. It has also received no information on the number of investigations on torture allegations initiated ex officio by procuratorates or as a result of information reported by doctors. The Committee notes, furthermore, that the State party has failed to produce information about the criminal or disciplinary sanctions imposed on offenders (arts. 2 and 12).

23. **The Committee reiterates its previous recommendation (see CAT/C/CHN/CO/4, para. 20) and requests the State party to provide information on the number of torture-related complaints received since 2008, the number of investigations on torture allegations initiated ex officio by procuratorates or as a result of information reported by doctors, and concerning the criminal or disciplinary sanctions imposed on those found to have committed torture or ill-treatment. The Committee also urges the State party to establish an independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment. The State party should take the necessary steps to ensure that:**

(a) **There is no institutional or hierarchical relationship between the independent oversight investigators and the suspected perpetrators of torture and ill-treatment;**

(b) **The independent oversight mechanism is able to perform its functions without interference of any kind;**

(c) **Alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, to commit reprisals against the alleged victim or to obstruct the investigation;**

(d) **Chinese Communist Party Politics and Law Committees are prevented from undertaking inappropriate or unwarranted interference with the judicial process (see Basic Principles on the Independence of the Judiciary, para. 4);**

(e) **All reports of torture or ill-treatment are promptly, effectively and impartially investigated;**

(f) **Persons suspected of having committed torture or ill-treatment are duly prosecuted and, if they are found guilty, receive sentences that are commensurate with the gravity of their acts and victims are afforded appropriate redress.**

Deaths in custody and prompt medical treatment in detention

24. The Committee remains concerned over allegations of death in custody as a result of torture or resulting from lack of prompt medical care and treatment during detention, as was reportedly the case of Cao Shunli and Tenzin Delek Rinpoche. It is also concerned over information that the procedures in place to investigate deaths in custody are often ignored in practice and relatives face many obstacles to press for an independent autopsy and investigation or to recover the remains. The Committee regrets that, despite its requests to the State party's delegation to provide statistical data on the number of deaths in custody during the period under review, no information has been received on this subject, or on any investigations into such deaths. The Committee also regrets the State party's failure to provide information on the number of instances in which the procuratorates overturned the medical appraisals of death due to illness made by prison medical doctors. No information has been provided either on the number of instances in which relatives of the deceased

objected to the procuratorate's conclusion on the cause of the death (arts. 2, 11, 12, 13 and 16).

25. **The State party should provide the information and statistical data referred to in paragraph 23 of the present document, with a view to assessing its compliance with its obligations under the Convention. In addition, the State party should take the necessary measures to ensure that:**

(a) **All instances of death in custody, allegations of torture and ill-treatment and refusal to provide medical treatment are promptly and impartially investigated by an independent body other than the procuratorial authorities;**

(b) **Those found responsible for deaths in custody that result from torture, ill-treatment or denial of medical treatment are brought to justice and, on conviction, adequately punished;**

(c) **Detained persons have access to adequate medical care, including to a doctor of their choice.**

Solitary confinement and use of restraints

26. The Committee is concerned that the State party considers solitary confinement as a "management method" in detention centres, which is applied to all "class 1- major safety risk" detainees, including detainees at risk of self-harm, suspected of having mental illnesses and those who "pick quarrels and provoke troubles". Solitary confinement can also be imposed in compulsory isolation drug treatment centres when persons undergoing drug treatment are not "reformed through education" or do not obey discipline, among many other grounds. The Committee regrets the lack of relevant statistical data on the use of solitary confinement in both instances, as well as information on its maximum duration. It also regrets the lack of information with regard to the regulation and due process rights concerning the use of restraints. In this regard, the Committee expresses concern at the State party's explanation that the use of the so-called "interrogation chair" is justified "as a protective measure to prevent suspects from escaping, committing self-injury or attacking personnel", which is highly improbable during an interrogation (art. 16).

27. **The State party should:**

(a) **Limit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review, in line with international standards. The State party should establish clear and specific criteria in its regulations for decisions on solitary confinement, indicating the conduct, type and maximum duration;**

(b) **Prohibit the use of solitary confinement for an indefinite period on persons with intellectual or psychosocial disabilities, juveniles, pregnant women, women with infants and breastfeeding mothers in prison;**

(c) **Ensure that detainees' due process rights are respected when subjecting them to disciplinary actions in general and solitary confinement in particular;**

(d) **Avoid the use of restraints as much as possible or apply them, only if strictly regulated, as a measure of last resort, when less intrusive alternatives for control have failed and for the shortest possible time. The use of the so-called "interrogation chairs" during interrogations should be prohibited;**

(e) **Compile and regularly publish comprehensive disaggregated data on the use of solitary confinement and restraints, including related suicide attempts and self-harm.**

Monitoring and inspection of places of detention

28. Notwithstanding the State party's position that the procuratorates are responsible for supervising detention, the Committee remains concerned that their dual function as prosecutors and supervisors compromises the independence of their functions, as previously indicated by the Committee (see CAT/C/CHN/CO/4, para. 20). Furthermore, it notes the existence of other monitoring mechanisms, such as the special supervisors of detention facilities or the representatives of the People's Congresses, but it regrets the lack of information regarding their reporting obligations and the effectiveness of their recommendations (arts. 11 and 16).

29. **The Committee calls upon the State party to:**

(a) **Establish an independent oversight body to monitor places of detention, with the mandate to carry out unhindered and unannounced visits. The recommendations of such body should be made public in a timely and transparent manner and the State party should take action upon its findings;**

(b) **Grant access to places of detention to domestic and international human rights bodies and experts;**

(c) **Consider the possibility of ratifying the Optional Protocol to the Convention.**

State secrets provisions and lack of data

30. Recalling its previous recommendations (see CAT/C/CHN/CO/4, paras. 16 and 17), the Committee remains concerned at the use of State secrecy provisions to avoid the availability of information about torture, criminal justice and related issues. While appreciating the State party's assertion that "information regarding torture does not fall within the scope of State secrets", the Committee expresses concern at the State party's failure to provide a substantial amount of data requested by the Committee in the list of issues and during the dialogue. In the absence of the information requested, the Committee finds itself unable to fully assess the State party's actions in the light of the provisions the Convention. Furthermore, the Committee regrets that the same concerns raised in its previous recommendation with regard to the 1988 Law on the Preservation of State Secrets persist in relation to the 2010 Law on Guarding State Secrets. The Committee is also disturbed at reports that a significant amount of information related to torture and the actions of public security authorities under the Criminal Procedure Law remain out of the public domain owing to the State secrets exception of the Regulations on Open Government Information. Furthermore, it notes with concern the limited scope of the Regulations on Open Government Information to information about administrative actions by administrative organs, excluding matters within the criminal law system (arts. 12, 13, 14 and 16).

31. **The Committee calls for the declassification of information related to torture, in particular, information about the whereabouts and state of health of detained persons whose cases fall under the scope of the State Secrets Law. The State party should also declassify information on the numbers of deaths in custody, detainees registered, allegations of torture and ill-treatment and consequent investigations, administrative detention and death penalty cases. The State party should ensure that the determination as to whether a matter is a State secret should be the object of an appeal before an independent tribunal.**

Coerced confessions and exclusionary procedures

32. While welcoming the 2012 amendment to the Criminal Procedure Law, which explicitly excludes the use of illegal evidence extracted by torture at any stage of the criminal proceedings (see para. 4 (a) above), the Committee remains concerned at reports that courts often shift the burden of proof back to defendants during the exclusionary procedures and dismiss lawyers' requests to exclude the admissibility of confessions. In that connection, the Committee is concerned about the lack of statistical data provided by the State party on the instances in which the exclusionary rule has been invoked and the outcome of those instances (art. 15).

33. **The State party should adopt effective measures to strictly enforce the new legal provisions and guarantee that coerced confessions or statements are inadmissible in practice, except when invoked against a person accused of torture as evidence that the statement was made. In this respect, the Committee calls on the State party to:**

(a) **Ensure that, where there is an allegation that a statement was made under torture, the burden of proof effectively remains on the procuratorate and the courts. A forensic medical examination should be immediately ordered and the necessary steps should be taken to ensure that the allegations are promptly and properly investigated;**

(b) Adopt guidelines on what constitutes illegally obtained evidence, which should include prolonged interrogation and deprivation of sleep, and ensure that judges receive training on how to identify the various actions that constitute torture, including psychological ones and how to initiate investigations of such cases;

(c) **Deliver a strong message, through the appropriate channels, to judges and procuratorates, reminding them of their obligation to take relevant action whenever they have reasons to believe that a person brought before them may have been subjected to torture or ill-treatment.**

Audiovisual recording of interrogations

34. While appreciating the amended provisions of the Criminal Procedure Law requiring the video recording of interrogations in major criminal cases, and the implementation of a system of audiovisual recording in areas where cases are handled, the Committee regrets that the audiovisual recording of interrogations is not mandatory in all cases. It also expresses concern with regard to the independence of the auditing system of the recordings, which is carried out by the legal department of the public security organ. In this regard, the Committee notes with concern reported cases in which the police have selectively recorded parts of interrogations or incurred into acts of torture outside the video surveillance. It is also concerned over reports that meetings between lawyers and suspects are often monitored, despite being prohibited by law (art. 15).

35. **The State party should:**

(a) **Adopt the necessary measures to ensure the compulsory video recording of all criminal interrogations in their entirety. Audiovisual footage should be kept for a period sufficient for it to be used as evidence;**

(b) **Guarantee that complete audiovisual footage of the interrogation and related written documents are systematically transmitted to the relevant procuratorate, and a copy is made available to the defence and the court;**

(c) **Exclude from proceedings evidence obtained in breach of the lawyer-client privilege;**

(d) **Hold police accountable for withholding, deleting or manipulating records of interrogations and for breaching the lawyer-client privilege;**

(e) **Establish an independent and effective auditing system of the recordings with no institutional or hierarchical links with the investigators.**

Detention and prosecution based on broadly defined offences

36. While noting the delegation's statement that "government acts of intimidation and reprisals against citizens do not exist in China", the Committee remains concerned at consistent reports that human rights defenders and lawyers, petitioners, political dissidents and members of religious or ethnic minorities continue to be charged, or threatened to be charged, with broadly defined offences as a form of intimidation. Such offences reportedly include "picking quarrels and provoking troubles", "gathering a crowd to disturb social order" or more severe crimes against national security. In this respect, the Committee expresses particular concern at the broadly defined crimes grouped under the categories of "endangering national security" and "terrorism" in the Criminal Law and in the 2015 National Security Law, whose scope is further expanded in the definition provided in article 374 of the "Ministry of Public Security Provision on Procedures for Handling Criminal Cases". In view of the above, the Committee regrets the State party's failure to clarify the criteria used to qualify these crimes, in spite of the questions raised by the Committee (arts. 2 and 16).

37. **The State party should:**

(a) **Take the necessary legislative or other measures to adopt a more precise definition of terrorist acts and acts endangering national security, and ensure that all counter-terrorism and national security legislation, policies and practices are in full compliance with the Convention;**

(b) Refrain from prosecuting human rights defenders, lawyers, petitioners and others for their legitimate activities for broadly defined offences.

Obstacles to the cooperation of civil society organizations with the Committee

38. The Committee is concerned at allegations that seven human rights defenders, who were planning to cooperate with the Committee in connection with the consideration of the fifth periodic report of the State party, were prevented from travelling or were detained on the grounds that their participation could "endanger national security".

39. **The Committee calls the State party to investigate the above-mentioned cases and report back to the Committee.**

Investigation of alleged crimes against ethnic minorities

40. Notwithstanding the delegation's statement that "the allegations of unfair or cruel treatment to suspects or criminals from ethnic minority groups are groundless", the Committee has received numerous reports from credible sources that document in detail cases of torture, deaths in custody, arbitrary detention and disappearances of Tibetans. In addition, allegations have been received about acts directed against Uyghurs and Mongolians. In view of this information, the Committee remains seriously concerned at the State party's failure to provide information on 24 out of the 26 Tibetan cases mentioned in the list of issues (CAT/C/CHN/Q/5/Add.1, para. 27), despite the questions posed by the Committee during the dialogue (arts. 2, 11, 12 and 16).

41. **The Committee recalls the absolute prohibition of torture contained in article 2 (2) of the Convention, which states that "no exceptional circumstances whatsoever, whether ... internal political instability or any other public emergency, may be invoked as a justification of torture". The Committee also draws the State party's attention to its general comment No. 2 (2007), in which it mentions that States parties must ensure that the laws in practice are applied to all persons, regardless of ethnicity or of the reason for which the person is detained, including persons accused of political offences. The Committee urges the State party to provide the requested information on all Tibetan cases mentioned in paragraph 27 of the list of issues. It also urges the State party to ensure that all custodial deaths, disappearances, allegations of torture and ill-treatment and reported use of excessive force against persons in the autonomous region of Tibet and neighbouring Tibetan prefectures and counties, and in the Xinjiang Uyghur Autonomous Region, are promptly, impartially and effectively investigated by an independent mechanism.**

Alleged secret detention

42. Notwithstanding the State party's denial of the existence of unofficial places of detention, the Committee remains seriously concerned at consistent reports from various sources about a continuing practice of illegal detention in unrecognized and unofficial detention places — the so-called "black jails". It is further concerned by the fact that, despite the Committee's questions, the State party has not furnished any information on the number of investigations for illegally operating secret detention facilities or on the investigations into the alleged rape of Li Ruirui and the reported deaths of Wang Deian and Li Shulian in black jails. It remains equally concerned at the extended use of other forms of administrative detention, such as "legal education centres", "measures for the custody and education" of persons suspected of prostitution, measures of "compulsory isolation in drug treatment centres" and compulsory psychiatric institutionalization, which have been allegedly used to detain suspects without accountability. The Committee notes with concern reports indicating that the local police impose such measures without any judicial process (arts. 2, 11 and 16).

43. **The State party should:**

(a) **Ensure that no one is detained in any secret detention facility, as these are per se a breach of the Convention;**

(b) **Abolish all forms of administrative detention, which confine individuals without due process and make them vulnerable to abuse;**

(c) **Prioritize the use of community-based or alternative social-care services for persons with psychosocial disabilities or drug addiction;**

(d) **Avoid forced hospitalization or confinement for medical reasons, unless it is imposed as a last resort, for the minimum period required and only when accompanied by adequate procedural and substantive safeguards, such as prompt initial and periodic judicial review, unrestricted access to counsel and complaints mechanisms and an effective and independent monitoring and reporting system;**

(e) **Ensure that all allegations of torture, ill-treatment or arbitrary detention in places of administrative detention, including in former "re-education through labour" facilities, are impartially investigated, the results made public, and any perpetrators responsible for breaches of the Convention held accountable;**

(f) **Provide adequate redress to all persons who have been detained in secret detention facilities and their families.**

***Shuanggui* system**

44. While noting the State party's position that the internal disciplinary system of the Chinese Communist Party for investigating officials (*shuanggui*) has a legal basis and does not permit the use of torture, the Committee expresses concern at reported cases of officials who have been subject to ill-treatment under this system. It is also concerned that the discipline inspection commissions can summon and investigate officials outside the ordinary law enforcement system, and that suspects do not have a right to have a counsel during the interrogation, which leaves them at risk of torture (arts. 2 and 12).

45. **The State party should ensure that the practice of detaining officials for interrogation under the *shuanggui* disciplinary system is abolished and that any disciplinary proceedings are conducted with full observance of the requirements of fair and proper procedure, including the right to be legally represented. The State party should also ensure that all allegations of ill-treatment within the *shuanggui* disciplinary system are promptly investigated in an impartial manner by an independent body and that there is no institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts.**

Non-refoulement and forced repatriations to the Democratic People's Republic of Korea

46. While welcoming the adoption in 2012 of the Exit-Entry Administration Law (see para. 4 (b) above), the Committee remains concerned that, in the absence of national asylum legislation and administrative procedures, the refugee determination process has to be carried out by the Office of the United Nations High Commissioner for Refugees (UNHCR). The Committee is also concerned at the State party's rigorous policy of forcibly repatriating all nationals of the Democratic People's Republic of Korea on the ground that they have illegally crossed the border solely for economic reasons. In that regard, the Committee takes note of over 100 testimonies received by United Nations sources (see A/HRC/25/63, paras. 42-45), in which nationals of the Democratic People's Republic of Korea indicate that persons forcibly repatriated to the Democratic People's Republic of Korea have been systematically subjected to torture and ill-treatment. In the light of this information, the Committee regrets the State party's failure to clarify, in spite of the questions raised during the dialogue, whether or not nationals of the Democratic People's Republic of Korea are denied access to refugee determination procedures in China through UNHCR, as reported to the Committee by various sources (art. 3).

47. **The State party should:**

(a) **Adopt the necessary legislative measures to fully incorporate into domestic legislation the principle of non-refoulement set out in article 3 of the Convention, and promptly establish a national asylum procedure, in cooperation with UNHCR;**

(b) **Immediately cease forcible repatriation of undocumented migrants and victims of trafficking to the Democratic People's Republic of Korea, and allow UNHCR personnel unimpeded access to nationals of the Democratic People's Republic of Korea who have crossed the border, in order to determine if they qualify for refugee status.**

48. **The Committee reminds the State party that under no circumstance should the State party expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In order to determine the applicability of the obligations that it has assumed under article 3 of the Convention, the State party should thoroughly examine the merits of each individual case, including the overall situation with regard to**

torture in the country of destination. It should also support effective post-return monitoring arrangements in cases of refoulement, including any conducted by UNHCR.

Death penalty

49. The Committee welcomes the information that the State party ended the use of the death penalty for some economic and non-lethal crimes. However, the Committee remains concerned at the lack of specific data on the application of the death penalty, which prevents it from verifying whether this new legislation is actually being applied in practice. The Committee remains equally concerned by reports on the use of shackles for 24 hours a day and in all circumstances on persons on death row. While the Committee values the abolition of the practice of removing organs of executed persons without their consent, it remains concerned at the lack of independent oversight on whether the consent is effectively given (art. 16).

50. **The Committee encourages the State party to establish a moratorium on executions and commute all existing death sentences, and to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of death penalty. In the meantime, the State party should adopt the necessary measures to:**

(a) **Ensure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment, by abstaining from automatically imposing restraints on death row prisoners on the basis of their penalty;**

(b) **Ensure in practice that the removal of organs only takes place on the basis of informed consent and that compensation is provided to the relatives of convicted persons whose organs were removed without their consent. The State party should also commission an independent investigation to look into claims that some Falung Gong practitioners may have been subjected to this practice (see CAT/C/CHN/CO/4, para. 25).**

Use of coercive measures in the implementation of the population policy

51. The Committee values that the Population and Family Planning Law prohibits the use of coercive measures for the implementation of the population policy. However, it is concerned at reports of coerced sterilization and forced abortions, and regrets the lack of information on the number of investigations into such allegations. The Committee also regrets the lack of information regarding redress provided to victims of past violations (arts. 12 and 16).

52. **The State party should:**

(a) **Review the legislation, local regulations, policies and practice related to the population policy to ensure the effective prevention and punishment of coerced sterilization and forced abortion;**

(b) **Ensure that all allegations of coerced sterilization and forced abortion are impartially investigated, that the persons responsible are held accountable and that redress is provided to the victims.**

Tiananmen Square protests of 1989

53. The Committee notes the State party's position that the measures taken by the Government of China during the military suppression of the Tiananmen Square protests on 3 and 4 June 1989 "were necessary and correct" and that the case has consequently been "closed". The Committee is concerned, however, at the State party's failure to clarify

whether an investigation took place on the alleged use of excessive force and other human rights violations by military officers in Beijing following the Tiananmen Square protests, resulting in the death of hundreds of civilians. The Committee draws the attention of the State party to its general comment No. 3 (2013) on the implementation of article 14 by States parties, in which it indicates that a State's "failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14". The Committee is equally concerned at the failure of the State party to inform families of the whereabouts of their relatives who participated in the protests and are still in detention, and of persons who have allegedly been detained for organizing activities or expressing views to memorialize the event on the occasion of its twenty-fifth anniversary, in 2014 (arts. 12 and 14).

54. **Recalling its previous recommendation (see CAT/C/CHN/CO/4, para. 21), the Committee urges the State party to ensure that:**

(a) **All allegations of excessive use of force, torture and other ill-treatment perpetrated by State officials on or following the 3 and 4 June 1989 suppression of protests are effectively, independently and impartially investigated by an independent authority and that perpetrators are prosecuted and, if found guilty, punished;**

(b) **Victims and their families obtain full reparation;**

(c) **Families of those arrested or disappeared in connection with the 1989 events and its memorialization are informed of the fate of their relatives;**

(d) **Victims, their families, witnesses and others who intervene on their behalf are protected at all times against retaliation for claiming their legitimate right to obtain redress and accountability for past violations;**

(e) **The legal safeguards and due process rights of those detained in connection with the 1989 events, or with current activities to memorialize it, should be fully respected.**

Lesbian, gay, bisexual, transgender and intersex persons

55. The Committee is concerned about reports that private and publicly run clinics offer the so-called "gay conversion therapy" to change the sexual orientation of lesbian and gay persons, and that such practices include the administration of electroshocks and, sometimes, involuntary confinement in psychiatric and other facilities, which could result in physical and psychological harm. While noting that, in December 2014, a Beijing court ordered one such clinic to pay compensation for such treatment, the Committee regrets the State party's failure to clarify whether such practices are prohibited by law, have been investigated and ended, and whether the victims have received redress (arts. 10, 12, 14 and 16).

56. **The State party should:**

(a) **Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of lesbian, gay, bisexual, transgender and intersex persons and prohibit the practice of so-called "conversion therapy", and other forced, involuntary or otherwise coercive or abusive treatments against them;**

(b) **Ensure that health professionals and public officials receive training on respecting the human rights of lesbian, gay, bisexual, transgender and intersex persons, including their rights to autonomy and physical and psychological integrity;**

(c) **Undertake investigations of instances of forced, involuntary or otherwise coercive or abusive treatments of lesbian, gay, bisexual, transgender and intersex persons and ensure adequate redress and compensation in such cases.**

Redress and rehabilitation

57. While welcoming the amendment to the Law on State Compensation, which explicitly includes provisions for the State to grant awards in compensation for psychological harm suffered, the Committee is concerned that claims for redress against the State are statute-barred within two years from the day the plaintiff knew or should have known of the damage. While noting the information by the delegation that there is no restriction on non-governmental organizations that are willing to provide rehabilitation services to victims of torture, the Committee regrets the lack of information on whether there is a formal proactive mechanism in place for providing such services (art. 14).

58. **The Committee, recalling its general comment No. 3 (2013), urges the State party to:**

(a) **Take the necessary legislative and administrative measures to guarantee that victims of torture and ill-treatment benefit from all forms of redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;**

(b) **Refrain from applying statutes of limitation to the claims made by victims of torture or ill-treatment against the State;**

(c) **Fully assess the needs of torture victims and ensure that specialized, holistic rehabilitation services are available and promptly accessible without discrimination, through the direct provision of rehabilitative services by the State, or through the funding of other facilities, including those administered by non-governmental organizations.**

Training

59. The Committee regrets the lack of information on the proportion of persons trained on the provisions of the Convention and on the impact such training have had on the prevention of torture (art. 10).

60. **The State party should ensure that periodic and compulsory training is provided to all officials involved in the treatment and custody of persons deprived of their liberty on the provisions of the Convention, non-coercive interrogation techniques and on the guidelines set out in the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (the Istanbul Protocol). The State party should also develop and apply a methodology for evaluating the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol.**

Follow-up procedure

61. **The Committee requests the State party to provide, by 9 December 2016, information on follow-up to the Committee's recommendations on restrictions to the rights to access a lawyer and to give notification of custody; the reported crackdown on lawyers and activists; the independence of investigations into torture allegations; and State secret provisions and lack of data (see paras. 13, 19, 23 and 31 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

62. **The Committee encourages the State party to consider making the declaration under articles 21 and 22 of the Convention.**

63. **The Committee encourages the State party to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for a follow-up visit to the one he conducted in November and December 2005 (see E/CN.4/2006/6/Add.6).**

64. **The Committee reiterates its previous recommendations (see A/55/44, para. 124, and CAT/CO/CHN/4, para. 40) that the State party consider withdrawing its reservations and declarations to the Convention.**

65. **The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.**

66. **The Committee requests the State party to submit its next periodic report, which will be its sixth, by 9 December 2019.**